"NOW THIS AGREEMENT WITNESSETH as follows:-

1. In consideration of the sum of Dollars three thousand three hundred ($3,300) now paid by the Purchaser to the Vendor . . . the Vendor . . . hereby assign unto the Purchaser all furniture and fixtures on the said premises and do hold the same unto the Purchaser absolutely.
2. The Vendor . . . covenant with the Purchaser that he has power to transfer the tenancy of the aforesaid premises into his own name.
3. The Purchaser agrees with the Vendor . . . that he will undertake on his own accord to have the tenancy transferred into his name and all expenses incurred shall be borne by him."

The appellant's assertion that he attempted to transfer the tenancy of the premises to his own name was disbelieved by the trial judge who also found that all future rent receipts were made out in the name of D. Abdullah.

The sole issue in this appeal is whether on the true construction of the deed the tenancy of the premises had been transferred by way of assignment to the appellant by D. Abdullah. It is conceded on behalf of the appellant that a transfer of the tenancy by way of an assignment would have to be made by deed.

The High Court came to the conclusion that under the document the tenancy of the premises had not been assigned by D. Abdullah to the appellant and held that it was merely an agreement evidencing the sale of the furniture and fittings on the premises by D. Abdullah to the appellant.

We agree with the conclusion and finding of the High Court. The rules applicable to the construction of such an instrument as the one under consideration are set out in the judgment of Lopes, L.J. in *Ex Parte Dawes. In Re Moon*[1]:-

"There are several well-established rules applicable to the construction of deeds. One is this, that, if the operative part of a deed is clear, and the recitals are not clear, the operative part must prevail. Again, if the recitals are clear, but the operative part is ambiguous, the recitals control the operative part. If, again, the operative part and the recitals are both clear, but the one is inconsistent with the other, the operative part must prevail."

In the present case, we are of the opinion that there is no ambiguity in the operative part of the deed. It transfers the property in the fixtures and fittings on the premises and nothing else to the appellant. Similarly, in our opinion, the recitals are clear. They state that D. Abdullah has agreed to sell the fixtures and fittings to the appellant. If the latter part of the recitals referring to the agreement of the parties that D. Abdullah shall cease to be the principal tenant of the premises can be said to be ambiguous in so far as a transfer of the tenancy is concerned, the ambiguity is resolved by the clear words in the operative part where it is stated that the appellant "would undertake on his own account to have the tenancy transferred into his own name."

Accordingly, the appeal must be dismissed with costs.

Appeal Dismissed.

Solicitors: *J.B. Jeyaretnam & Co.; Kirpal Singh & Co.*

LOW KOK TONG v. TEO CHAN PAN

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.) September 17, 1982]

[Singapore – Civil Appeal No. 57 of 81]

Damages – Death – Claim for loss of future earnings – No available evidence for assessment – Claim rejected – Appeal – Appeal allowed – Gammell v. *Wilson followed – Civil Law Act (Cap. 30), s. 8.*

The appellant, administrator of the deceased estate claimed for loss of future earnings due to the estate of the deceased under section 8 of the Civil Law Act (Cap.30). The deceased died from injuries sustained in an accident between a military truck, in which he was travelling, and a motor lorry. He was 20 years old and in national service. He received a gross monthly pay of $122.47. The mother said that the deceased had told her that he was going to sign on as a regular for 6 years. She also said that he had attended night classes doing electrical course.

The High Court dismissed the claim (see [1982] 1 M.L.J. 62) and held that the available evidence for assessment of damages was meagre and contradictory. It was not possible therefore even to begin to make an estimate of the probable future earnings of the deceased. The appellant appealed.

Held, allowing the appeal: the appellant would be awarded $27,000.00 as loss of future earnings for the "lost years" on the basis of a multiplier of 15 years at an earning after expenses of $150/- per month.

Per Curiam: "On the basis of our doctrine of binding precedents, it is axiomatic that any decision of the House of Lords is not binding on us. But such a decision on an English provision similar in all material respects to our own is highly persuasive and should be adopted unless it is unacceptable in principle. Although Lord Diplock and some other Law Lords had made certain reservations on the decision in *Gammell's case* and had called for legislative

reforms, we would follow the *ratio decidendi* of that case and give section 8 of our Civil Law Act, Cap. 30 a similar construction."

Cases referred to:

(1) *Gammell* v. *Wilson & Anor.* ; *Furness & Anor.* v. *B & S Massey Ltd.* [1980] 2 All E.R. 557; [1981] 1 All E.R. 578, H.L.

(2) *Oliver* v. *Ashman* [1962] 2 Q.B. 210.

(3) *Pickett* v. *British Rail Engineering Ltd.* [1980] A.C. 136.

COURT OF APPEAL.

R. Karuppan Chettiar for the Appellant.
Cheong Yuen Hee for the Respondent.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): Low Eng Seah, a national serviceman, died from injuries he had sustained in an accident between a military truck, in which he was travelling, and a motor lorry. The administrator of his estate made a claim in the High Court for loss of future earnings under section 8 of the Civil Law Act, Cap. 30 and relied on the decision of the House of Lords in *Gammell* v. *Wilson & Ors.*; *Furness & Anor.* v. *B. & S. Massey Ltd.*(1)

The High Court dismissed the claim. The learned trial Judge in his judgment alluded to certain reservations of certain Law Lords in *Gammell's case* and the "immense practical difficulties in giving effect to the decision." After reviewing some of the evidence, he stated at the end of the judgment as follows:—

"I found the available evidence for assessment of damages meagre and contradictory. On the evidence I was unable to say what the deceased was going to do or how much he would earn in his normal working lifespan. It was not possible therefore even to begin to make an estimate of the probable future earnings of the deceased. So then, it was impossible to assess a fair compensation for the 'lost years'. I therefore dismissed the plaintiff's claim."

Against that judgment this appeal was brought. We allowed the appeal with costs. We now give our reasons.

As the claim is made under section 8 of the Civil Law Act, Cap. 30 it is necessary to set out the relevant parts of that section and they are as follows:—

"8 (1) Subject to the provisions of this section, on the death of any person after the June 10, 1940, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of his estate:

....

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person –

(a) ...

(b) ...

(c) Where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included."

These provisions are *in pari materia* with the corresponding provisions of section 1 of the English Law Reform (Miscellaneous Provisions) Act 1934. We would now say something about the interpretation of these provisions by the English courts.

Until 1980 the English courts have held that it was not proper to allow any damages for loss of earnings for the number of years of a person's life which had been shortened (popularly referred to as "the lost years") by reason of the serious injury he has sustained. In *Oliver* v. *Ashman*(2) a boy of twenty months was so seriously injured in a motor accident that he became mentally defective and incapable of any work. His expectation of life was reduced by thirty years. The English Court of Appeal refused to award any damages for the loss of earnings during the "lost years". They declined to add to any sum which, in effect, might descend to and be shared by such of his next-of-kin who might be living at the time of his death.

The law stood until the decision of the House of Lords in *Pickett* v. *British Rail Engineering Ltd.*(3) Ralph Henry Pickett had a wife and two children. Up to the age of fifty one, he was healthy and was working for the railway. In building railway coaches, he came into contact with asbestos dust which was injurious to his health. He contacted mesothelioma which eventually caused in death. At fifty one he became ill and died five years later. He could have and would have worked until sixty five but for his ill-health and premature death. Pickett sued his employer for negligence and/or breach of statutory duty. He was awarded £14,947.64 damages of which £1,508.88 was the net sum in respect of loss of earnings. The sum was based on a finding that Pickett's expectation of life had been reduced to one year from the date of trial, and the loss of earnings related to the period of likely survival. Pickett appealed to the Court of Appeal but he died before the appeal was heard. The Court of Appeal did not award any sum beyond the survival period. On appeal by the

administratrix, who had obtained an order to carry on the proceedings, the House of Lords awarded damages for the ten lost years. The majority of the Law Lords held that a person is entitled to be compensated not only for the immediate reduction in his earnings but also for the loss of the whole period for which he has been deprived of his ability to earn them but that the damages should be computed after deduction of his probable living expenses during that period.

Then in 1981 came *Gammell* v. *Wilson*, (*supra*), which were actions by administrators of two young men who had been killed in accidents as the result of the negligence of the respective defendants. There were two appeals heard together by the House of Lords. A fifteen year old boy was killed by negligent driving. The boy's father claimed damages under the English Fatal Accidents Act 1976 for himself and his wife as dependants of their dead son. He also claimed as administrator of the estate of the deceased boy under section 1 of the English Law Reform (Miscellaneous Provisions) Act 1934. The trial judge found that the deceased boy, if he had lived, would have been a modest wage earner and that, after making allowance for his own living expenses, he would have retained an average of £416 a year. Applying a 16-year multiplier, the judge arrived at £6,656 for loss of earnings.

In the second appeal, the deceased was 22 years old and in steady employment when he was killed at work. He was living at home and unmarried. The parents sued under the Act of 1934 and the trial judge assessed loss of future earnings at £17,275.

The House of Lords held:—

"(1) On the true construction of section 1 (2)(c) of the 1934 Act the restriction on an estate recovering or being deprived of a 'loss or gain to (the) estate' consequent on a person's death applied only to a loss or gain directly consequent on the death and not to a loss or gain resulting from a right to recover damages which vested in the deceased immediately before his death and which then passed to the beneficiaries of his estate, whether they were his dependants or not. That construction, coupled with the principle that a cause of action for loss of earnings in the lost years vested in the deceased before he died (and in the case of instantaneous death vested in him immediately before he died) meant that the estate was not precluded by section 1 (2)(c) from recovering damages for the deceased's loss of earnings during the lost years in a claim under the 1934 Act. Accordingly, even though it produced a result which was neither sensible nor just, the House was constrained to hold that the plaintiffs were entitled to the damages awarded for the lost years despite the fact that those damages far exceeded the amount to which they were entitled under the 1976 Act as dependants."

On the basis of our doctrine of binding precedents, it is axiomatic that any decision of the House of Lords is not binding on us. But such a decision on an English provision similar in all material respects to our own is highly persuasive and should be adopted unless it is unacceptable in principle. Although Lord Diplock and some other Law Lords had made certain reservations on the decision in *Gammell's case* and had called for legislative reforms, we would follow the *ratio decidendi* of that case and give section 8 of our Civil Law Act, Cap. 30 a similar construction.

We now turn to the assessment of the loss of earnings during the "lost years" of Low Eng Seah, deceased. In *Gammell* v. *Wilson* (*supra*, at p. 593) Lord Scarman said:—

"The correct approach in law to the assessment of damages in these cases presents, my Lords, no difficulty, though the assessment itself often will. The principle must be that the damages should be fair compensation for the loss suffered by the deceased in his lifetime. The appellants in *Gammell's case* were disposed to argue, by analogy with damages for loss of expectation of life, that, in the absence of cogent evidence of loss, the award should be a modest conventional sum. There is no room for a 'conventional' award in a case of alleged loss of earnings of the lost years. The loss is pecuniary. As such, it must be shown, on the facts found, to be at least capable of being estimated. If sufficient facts are established to enable the court to avoid the fancies of speculation, even though not enabling it to reach mathematical certainty, the court must make the best estimate it can. In civil litigation it is the balance of probabilities which matters. In the case of a young child, the lost years of earning capacity will ordinarily be so distant that assessment is mere speculation. No estimate being possible, no award, not even a 'conventional' award, should ordinarily be made. Even so, there will be exceptions: a child television star, cut short in her prime at the age of five, might have a claim; it would depend on the evidence. A teenage boy or girl, however, as in *Gammell's case* may well be able to show either actual employment or real prospects, in either of which situation there will be an assessment claim. In the case of a young man, already in employment (as was young Mr. Furness), one would expect to find evidence on which a fair estimate of loss can be made. A man, well-established in life, like Mr. Pickett, will have no difficulty. But in all cases it is a matter of evidence and a reasonable estimate based on it.

Low was 20 years of age, in national service. But for the fatal accident, he would have enjoyed a normal expectation of life. As a soldier, his gross salary was $122.47. He had told his mother that he intended to sign on as a regular for six years. He had prospects of becoming a warrant officer, Grade I. He was also attending night classes, taking an electrical course with a view to become an electri-

cian. He showed a determination to get on. He had a savings account and a life insurance. Although they were very modest sums, the deceased was evidently disposed to be provident. It should also be noted that the deceased had worked in a shop as an assistant and had earned $150/- per month before he joined national service. We find that he would probably be a modest wage earner but for his premature death. His mother had said in evidence that the deceased was giving her $60/- every month when he was in national service. On the other hand, admittedly, the father said in evidence that the deceased had from time to time asked his mother for money. The contradiction, in our view, was minor and, in all the circumstances, does not stand in the way of an educated assessment of the loss of earnings for the "lost years". Counsel for the Appellant strongly urged us to apply a multiplier of 16 years with earnings ranging from $170/- to $200/- per month. We applied a multiplier of 15 years at an earning after expenses of $150/- per month. We accordingly awarded $27,000/- as the loss of future earnings for the "lost years".

We have, however, considered it necessary to state at the end of this judgment that the effect of our decision, reluctantly arrived at, could give rise to some undesirable consequences. It could be questioned with some justification why persons other than the actual dependants of a deceased should be unjustly enriched by an award to the estate for the "lost years". Lord Scarman in *Gammell's case* at p. 595 in fact also said:-

"My Lords, there is some disquiet expressed by judges, and understandably felt by insurers, about two aspects of the law: the 'double recovery' now possible in some cases, and the very great discrepancy which can arise, as happened in the *Furness case*, between the damages recoverable by the estate for the lost years and the damages recoverable by the dependants under the Fatal Accidents Act. Each of these possibilities may well be a mischief; certainly, a law which allows the discrepancy to arise wears the appearance of anomaly, and is unlikely to be understood or acceptable."

All but one of the Law Lords in *Gammell's case* felt constrained to call for legislative intervention to reform the law in this regard. Lord Diplock at p. 583 expressed the following view: "I join with your Lordships in thinking that it is too late for anything short of legislation to bring . . . sense and justice to the law relating to damages for death recoverable by the estate of the deceased." The U.K. Royal Commission on Civil Liability and Compensation for Personal Injury (Cmnd 7054-I, para 435) has recommended: "The loss of the victim's income in the lost years is in practice felt by those dependent on him. We think it is in their hands that the right to recover damages should lie." It is the province of our legislature to reform the law.

Appeal allowed.

Solicitors: *Murphy & Dunbar; Chan, Goh & Co.*

LEO TENG CHOY v. BEETILE CONSTRUCTION

[D.C.A. (Rajah J.) May 31, 1982]
[Singapore – District Court Appeal No. 11 of 1981]

Contract – Agreement – For supply and laying of terrazzo tiles in HDB flat – Claim by plaintiff that tiles were inferior – Claim disallowed by lower court – Appeal allowed.

The plaintiff/appellant was the occupier of a HDB flat and the defendants/respondents were a firm of general building contractors. By an agreement dated October 11, 1979 the defendants agreed to do various works to the plaintiff's flat, which entailed the supply of terrazzo tiles and the laying, polishing and waxing thereof to the floor of the flat at $6,490 for the whole job. The samples of the terrazzo tiles that were shown to the plaintiff by the defendants before the agreement had been reached were neatly cut and in good shape. In November 1979, the plaintiff paid to the defendants a sum of $3,000 towards the contract price.

The plaintiff claimed that in breach of the said agreement, the defendants did not supply good and proper materials nor did they do the works to the said flat with all due care, skill or diligence. As a result the plaintiff commenced proceedings in the District Court for breach of contract against the defendants for $7,285, being $3,000 paid to the defendants in advance and the balance of $4,285 being the sum the plaintiff would have to incur as a result of the defendants not carrying out the said agreement. The learned District Judge dismissed the plaintiff's claim and entered judgment for the defendants in the full sum of their counterclaim. The plaintiff appealed.

Held, allowing the appeal: (1) on the question of defective terrazzo tiles the finding of the learned trial judge was against the weight of evidence. As the evidence fell, one would have thought that on the question of defective tiles the best evidence to guide him would have been that of the Managing Partner of the defendants and not a contractor who had come on to the scene much later to complete the work. It is difficult, on evidence, to understand how the learned trial judge could have found that "the claim of the plaintiff that the defendants had supplied defective tiles and was therefore in breach of the contract must necessarily fail";

(2) the appeal would therefore be allowed and the claim dismissed: the plaintiff was entitled to the sum of